

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CRIMINAL NO. 2:10-CR-20005

HONORABLE NANCY G. EDMUNDS

v.

D-1, UMAR FAROUK ABDULMUTALLAB,

Defendant.

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**DEFENDANT ABDULMUTALLAB'S RESPONSE TO THE GOVERNMENT'S  
MOTION IN LIMINE TO ADMIT DEMONSTRATIVE EVIDENCE  
REGARDING DEFENDANT'S EXPLOSIVE DEVICE**

On September 9, 2011, the government filed a motion *in limine* in which it asks the court to admit as evidence at trial: (1) the testimony of an explosives expert; (2) a model of the bomb that the expert constructed; and (3) video recordings of three demonstrations conducted by the expert.

For the following reasons, Defendant ABDULMUTALLAB vehemently objects to the government introducing a model of the bomb, and video recordings.

**A. Model of the Bomb**

The government wants to introduce a model of the bomb that Defendant ABDULMUTALLAB allegedly had in his underwear. The government intends to show how the different components were assembled to create the explosive device.

Federal Rules of Evidence 403 says “[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury[.]”

The Court should exclude this evidence under FRE 403. Presenting the jury with a model of the bomb is unfairly prejudicial, and is only meant to inflame the jury and appeal to the jurors' emotions. The government has pictures of the bomb that clearly identify the various components. These pictures are sufficient to achieve the government's goal.

### **B. Three Video Recordings**

The government intends to introduce three video recordings at trial: (1) an explosives expert combining potassium permanganate and ethylene glycol in a syringe to show that the combination of these two chemicals produces smoke and fire; (2) the explosives expert detonating 76 grams of Pentaerythritol Tetranitrate ("PETN"), which is the amount of PETN recovered from the aircraft; and (3) the explosives expert detonating 200 grams of PETN, which is the amount of PETN that the explosives expert believes was in the bomb before it was detonated.

The government says it only intends to introduce the demonstrations to allow the jury to visualize the explosive force of PETN and how potassium permanganate and ethylene glycol react when mixed together. According to the government, the demonstrations are not intended to be exact replicas of how Defendant ABDULMUTALLAB's bomb would have detonated on board an aircraft.

In support of its argument that these demonstrations are admissible, the government relies on *United States v. Metzger*, 778 F.2d 1195 (6th Cir. 1985). In *Metzger*, defendant's wife and son were killed as a result of an explosion inside an automobile. *Metzger*, 778 F.2d at 1198. During the investigation, federal agents

exploded an automobile of the same make and model. *Id.* at 1199. The government then showed an inaudible videotape of the explosion to the jury. *Id.*

The defendant argued that the videotape should not have been shown to the jury because the experiment was not conducted under conditions of substantial similarity to the actual event. *Id.* at 1204. According to the Sixth Circuit, “[e]xperimental evidence may properly be admitted only if the test was conducted under conditions substantially similar to those of the event.” *Id.*

The Court held that the videotape was admissible because the differences the defendant focused on – the lack of luggage or other items in the test vehicle to absorb the blast; and, the government’s failure to introduce evidence showing the mileage on the two vehicles, the climatic conditions to which the test vehicle had been subjected, whether the test vehicle had been wrecked, or whether there were any differences in the quality of the test vehicle’s metal -- go more properly to the weight than to admissibility. *Id.* at 1204-05.

This case is distinguishable from *Metzger*. Here, the government wants to introduce video recordings of demonstrations that were performed in a laboratory and in an open field. Defendant ABDULMUTALLAB allegedly attempted to detonate a bomb on an aircraft. Accordingly, the demonstrations were not conducted under conditions “substantially similar” to those of the alleged event.

In addition, showing the jury demonstrations of an expert detonating 76 and 200 grams of PETN is unfairly prejudicial, unreliable, and irrelevant. The government has no knowledge of the amount of PETN that Defendant ABDULMUTALLAB had in his

bomb. Accordingly, it cannot argue that Defendant ABDULMUTALLAB's bomb would have had the same explosive force as is depicted in the video recordings.

**C. Conclusion**

WHEREFORE, standby counsel and Defendant ABDULMUTALLAB requests this Honorable Court to deny the government's motion to admit demonstrative evidence.

Respectfully Submitted,

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Dated: September 20, 2011

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**CERTIFICATION**

I hereby certify that the foregoing papers were electronically filed this date,  
served electronically or by mail to the following:

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**DEFENDANT'S ABDULMUTALLAB'S ACKNOWLEDGMENT AND ACCEPTANCE  
OF THE REPLY TO THE GOVERNMENT'S MOTION IN LIMINE  
TO ADMIT DEMONSTRATIVE EVIDENCE REGARDING  
DEFENDANT'S EXPLOSIVE DEVICE**

20-9-2011



Umar Farouk Abdulmutallab  
Register #44170-039  
Milan Correctional Facility

Date: September 15, 2011  
20